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January 28, 2021

Honorable Vera M. Scanlon, U.S.M.J.  
United States District Court  
Eastern District Of New York  
225 Cadman Plaza East, 1214 South  
Courtroom: 13A-South Wing  
Brooklyn, New York 11201

**Re: Morales et al. v. Fourth Avenue Bagel Boy, Inc. et al.**  
**18 Civ. 3734 (DLI) (VMS)**

Dear Judge Scanlon:

We represent the Plaintiffs in the above-referenced matter and submit this reply letter in further support of Plaintiffs' pending motion to strike Defendants' Answer and for the additional relief set forth in Plaintiffs' motion. Plaintiffs maintain that Defendant Natale's November 4, 2020 statements to the Court – that he closed his business *and* vacated the premises by October 1 – were *knowingly false* and warrant the imposition of sanctions. (ECF #50).

On January 4, 2021, this Court held a conference and issued a Scheduling Order stating, among other items:

As discussed during the 1/4/2021 conference, on or before 1/15/2021, Mr. Natale may submit papers and affidavits of witnesses in opposition to Plaintiffs' motion to strike addressing, for example, the status of the store and the corporation....

Defendant Natale *failed* to file any opposition to Plaintiffs' motion, which further shows that he cannot refute the fact that he made false statements to the Court on November 4, 2020.

According to public records, Defendants' business remains active as of January 25, 2021, in direct contradiction to Defendant Natale's November 4<sup>th</sup> statements to the Court. (Exhibit A).

Plaintiffs continue to maintain that Defendant Natale's November 4, 2020 statements to the Court – that he closed his business *and* vacated the premises by October 1 – were *knowingly false* and warrant the imposition of sanctions. (ECF #50).

Plaintiffs respectfully request that the Court grant Plaintiffs' motion and: (1) strike Defendants' Answer and enter default as against Defendant Natale; (2) grant Plaintiffs' previously filed motion for entry of default judgment as against the corporate defendant (ECF ##30, 44); and (3) award such other and further appropriate relief. *See, e.g., Sun World, Inc. v. Lizarazu Olivarria*, 144 F.R.D. 384, 389 (E.D. Cal. 1992) ("where, as here, a fraud has been committed upon the court, both Rule 11 and the inherent powers of the court support the sanction of dismissal and the entry of default judgment"); *Amway Corp. v. Shapiro Express Co., Inc.*, 102 F.R.D. 564 (S.D.N.Y. 1984) (Owen, J.) (granting motion to strike a defendant's answer).

Finally, we note that this is not the first infraction by Defendants in this lawsuit. Rather, as previously noted, since the filing of this lawsuit in 2018, Defendants have committed multiple violations of this Court's Orders/instructions, applicable rules and their obligations in this action, and have disregarded the Court's explicit warnings regarding the consequences of non-compliance. (*See, e.g.,* ECF ## 25, 32).

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

/s/ Kenneth A. Goldberg

Kenneth A. Goldberg

# EXHIBIT A

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through January 25, 2021.

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Selected Entity Name: FOURTH AVENUE BAGEL BOY, INC.

Selected Entity Status Information

**Current Entity Name:** FOURTH AVENUE BAGEL BOY, INC.

**DOS ID #:** 1961759

**Initial DOS Filing Date:** OCTOBER 03, 1995

**County:** KINGS

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC BUSINESS CORPORATION

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

STEVEN NATALE  
6907 FOURTH AVENUE  
BROOKLYN, NEW YORK, 11209

**Chief Executive Officer**

STEVEN NATALE  
6907 FOURTH AVENUE  
BROOKLYN, NEW YORK, 11209

**Principal Executive Office**

FOURTH AVENUE BAGEL BOY, INC.  
6907 FOURTH AVENUE  
BROOKLYN, NEW YORK, 11209

**Registered Agent**

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

#### **\*Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

\*Stock information is applicable to domestic business corporations.

#### **Name History**

Filing Date	Name Type	Entity Name
OCT 03, 1995	Actual	FOURTH AVENUE BAGEL BOY, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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